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Howard P. Magaliff

*Attorneys for Howard P. Magaliff,
Chapter 11 Trustee*

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	
In re:	:
	:
COMMONWEALTH REALTY GROUP, LLC,	:
	:
Debtor.	:
-----X	
HOWARD P. MAGALIFF, as Chapter 11	:
Trustee of Commonwealth Realty Group, LLC,	:
	:
Plaintiff,	:
	:
-against-	:
	:
LIQUID LOUNGE and JAMES CABAN,	:
	:
Defendants.	:
-----X	

Chapter 11
Case No. 13-23214 (RDD)

Adv. Pro. No. 14-_____

**COMPLAINT TO DETERMINE
VALIDITY OF LEASE AND FOR DAMAGES**

Howard P. Magaliff, the chapter 11 trustee (the “Trustee”) of the estate of Commonwealth Realty Group LLC (the “Debtor”), as and for his complaint against Liquid Lounge and James Caban (“Caban”) (“Defendants”), alleges the following upon knowledge as to his own acts and otherwise upon information and belief:

INTRODUCTION

1. The Trustee brings this action pursuant to Rules 7001(1), (2), (7) and (9) and Rule 7065 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and sections 541(a) and 542(a) to determine the validity of a purported lease between the Debtor, as

landlord and Liquid Lounge, as tenant, and to declare the lease void and unenforceable, (ii) if the lease is valid, for damages and turnover equal to the amount of rent set forth in the lease from December 1, 2013, and (iii) if the lease is not valid, permanently enjoining the Defendants and their officers, employees, servants, agents and anyone acting in concert with any of them from entering into and performing any work in the demised premises.

THE PARTIES

2. The Debtor filed a voluntary *pro se* petition for relief under chapter 11 of the Bankruptcy Code on July 22, 2013 (the “Filing Date”). Subsequently, the Debtor retained Elizabeth A. Haas, Esq., PLLC as counsel.

3. On October 24, 2013, the Court entered an Order granting the application of the United States Trustee to appoint a chapter 11 trustee pursuant to section 1104(a) of the Bankruptcy Code [doc. 28]. On the same day, the United States Trustee appointed the Trustee as the chapter 11 trustee [doc. 29], and on October 25, the Court entered an Order approving the Trustee’s appointment [doc. 32].

4. Defendant Caban is the sole equity holder of the Debtor, with an address at 8 The Promenade, New City, NY 10956 according to the Debtor’s List of Equity Security Holders filed on August 16, 2013 [doc. 10].

5. Upon information and belief, defendant Liquid Lounge is an entity whose principals include defendant Caban, Caban’s father and an unidentified third person.

JURISDICTION AND VENUE

6. This Court has jurisdiction pursuant to 28 U.S.C. §§ 157 and 1334.

7. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

8. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). If any of the claims asserted in this adversary proceeding are determined to be non-core, the Trustee consents to the entry of final judgment by the Bankruptcy Court.

GENERAL ALLEGATIONS

9. The Debtor owns a 12-unit residential apartment building located at 1547 Commonwealth Avenue, Bronx, NY (the “Property”). The Property also had five commercial units as of the Filing Date totaling in the aggregate approximately 4,000 square feet. The Property has been cited with over 300 housing code violations and as a result has been placed on the New York City Housing Preservation & Development’s Alternative Enforcement Program. At the time of the Trustee’s appointment, the Debtor’s sole member with responsibility for management, James Caban was in jail.

10. The Debtor and Liquid Lounge entered into a purported lease dated July 1 (sic) for property (the “demised premises”) located in the building known as 1756 E. Tremont Ave. (sic) (the “Lease”). A copy of the Lease is attached as Exhibit 1.

11. The demised premises are not identified in the Lease. Upon information, the demised premises consist of the five commercial units at the Property which have been combined into a single unit.

12. The Lease is for a term of ten years commencing December 1, 2013, with an option for the tenant to renew for another ten years.

13. The Lease provides for monthly rent of \$5,000 for years 1 through 5 commencing December 1, 2013, and monthly rent of \$7,000 for years 6 through 10.

14. The Lease does not appear to be signed. “Commonwealth Realty Group” is written in the space for the landlord’s signature, and “Liquid Lounge” is written in the space for the tenant’s signature.

15. No individual's name appears anywhere on the Lease as a principal, officer or authorized signatory of either the Debtor or Liquid Lounge.
16. The purported execution of the Lease is not witnessed.
17. The signatures of the parties are not notarized or otherwise acknowledged.
18. The ECF docket of the case does not reflect that the Debtor sought authorization to enter into the Lease.

FIRST CLAIM FOR RELIEF
(Determination of Validity of Lease)

19. Plaintiff incorporates each of the foregoing paragraphs as if fully set forth herein.
20. The Statute of Frauds provides: "A contract for the leasing for a longer period than one year, or for the sale, of any real property, or an interest therein, is void unless the contract or some note or memorandum thereof, expressing the consideration, is in writing, subscribed by the party to be charged, or by his lawful agent thereunto authorized by writing." N.Y. Gen. Oblig. Law § 5-703(2) (McKinney).
21. Pursuant to 11 U.S.C. § 363(b) and Bankruptcy Rule 7001(2), Plaintiff is entitled to a judgment determining whether the Lease was properly subscribed and executed, and whether the Lease is valid.

SECOND CLAIM FOR RELIEF
(In the Alternative, Damages Pursuant to 11 U.S.C. § 541)

22. Plaintiff incorporates each of the foregoing paragraphs as if fully set forth herein.
23. Property of the estate includes all legal or equitable interests in property that the estate acquires after the commencement of the case, under 11 U.S.C. § 541(a)(7).
24. Rent due under the Lease is property of the estate.

25. Pursuant to 11 U.S.C. § 542(b), “an entity that owes a debt that is property of the estate and that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the trustee, except to the extent that such debt may be offset under section 553 of this title against a claim against the debtor.”

26. If the Court determines that the Lease is valid, then pursuant to 11 U.S.C. §§ 541(a)(7) and 542(b), Plaintiff is entitled to a judgment directing turnover and payment for the amount of rent due under the Lease from December 1, 2013.

THIRD CLAIM FOR RELIEF
(Permanent Injunction)

27. Plaintiff incorporates each of the foregoing paragraphs as if fully set forth herein.

28. If the Lease is not valid, Plaintiff is entitled to an order permanently enjoining the Defendants and their officers, employees, servants, agents and anyone acting in concert with any of them from entering, using, making renovations to or in any way interfering with the Trustee’s use and possession of the demised premises.

WHEREFORE, the Trustee requests the entry of judgment in his favor as follows:

- (a) On the first claim for relief, determining whether the Lease is valid;
- (b) On the second claim for relief, for damages in the amount of unpaid rent from December 1, 2013;
- (c) On the third claim for relief, an order permanently enjoining the Defendants and their officers, employees, servant, agents and anyone acting in concert with any of them from entering, using, making renovations to or in any way interfering with the Trustee’s use and possession of the demised premises;
- (d) Costs and attorney fees; and

(e) Such other and further relief as is necessary and proper.

Dated: New York, New York
February 17, 2014

RICH MICHAELSON MAGALIFF
MOSER, LLP
Counsel for the Trustee
By:

/s/ Howard P. Magaliff
HOWARD P. MAGALIFF
340 Madison Avenue, 19th Floor
New York, NY 10173
212.220.9402
hmagaliff@r3mlaw.com

EXHIBIT 1

between

hereinafter jointly, severally and collectively referred to as TENANT..

5000 10000

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RE-POSSESSION BY LANDLORD	1
RE-LETTING	1
WAIVER BY TENANT	1
REMEDIES ARE CUMULATIVE	1
LANDLORD MAY PERFORM	1
ADDITIONAL RENT	1
AS TO WAIVERS	1
COLLECTION OF RENT FROM OTHERS	1
MORTGAGES	1
IMPROVEMENTS	1
NOTICES	1
NO LIABILITY	1
ABATEMENT	1
NO REPRISALS	1
SHAKING OF WALLS	1
VAULT SPACE	1
ENTRY	1
ATTORNEY'S FEES	1
POSSESSION	1

If the Tenant shall make default in the payment of the rent reserved hereunder, or any item of "additional rent" herein mentioned, or any part of either or in making any other payment herein provided for, or if the notice last above provided for shall have been given and if the condition which was the basis of said notice shall exist at the expiration of said ten days' period, the Landlord may immediately, or at any time thereafter, re-enter the demised premises and remove all persons and all or any property therefrom, either by summary dispossession proceedings, or by any suitable action or proceeding at law, or by force or otherwise, without being liable to indictment, prosecution or damages therefor, and re-possess and enjoy said premises together with all additions, alterations and improvements. In any such case or in the event that this lease be "terminated" before the commencement of the term, as above provided, the Landlord may either re-let the demised premises or any part or parts thereof for the Landlord's own account, or may, at the Landlord's option, re-let the demised premises or any part or parts thereof as the agent of the Tenant, and receive the rents therefor, applying the same first to the payment of such expenses as the Landlord may have incurred, and then to the fulfillment of the covenants of the Tenant herein, and the balance, if any, at the expiration of the term first above provided for, shall be paid to the Tenant. Landlord may rent the premises for a term extending beyond the term herein granted without releasing Tenant from any liability. In the event that the term of this lease shall expire as above in this subdivision "Sixth" provided, or terminate by summary proceedings or otherwise, and if the Landlord shall remain liable for, and the Tenant hereby agrees to pay to the Landlord, until the time when this lease would have expired but for such termination or expiration, the equivalent of the amount of all of the rent and "additional rent" reserved herein, less the avails of reletting, if any, and the same shall be due and payable by the Tenant to the Landlord on the several rent days above specified, that is, upon each of such rent days the Tenant shall pay to the Landlord the amount of deficiency then existing. The Tenant hereby expressly waives any and all right of redemption in case the Tenant shall be dispossessed by judgment or warrant of any court or judge, and the Tenant waives and will waive all right to trial by jury in any summary proceedings hereafter instituted by the Landlord against the Tenant in respect to the demised premises. The words "re-enter" and "re-entry" as used in this lease are not restricted to their technical legal meaning.

In the event of a breach or threatened breach by the Tenant of any of the covenants or provisions hereof, the Landlord shall have the right of injunction and the right to invoke any remedy allowed at law or in equity, as if re-entry, summary proceedings and other remedies were not herein provided for.

SEVENTH.—If the Tenant shall make default in the performance of any covenant herein contained, the Landlord may immediately, or at any time thereafter, without notice, perform the same for the account of the Tenant. If a notice of mechanic's lien be filed against the demised premises or against premises of which the demised premises are part, for or purporting to be for labor or material alleged to have been furnished, or to be furnished to or for the Tenant at the demised premises and if the Tenant shall fail to take such action as shall cause such lien to be discharged within fifteen days after the filing of such notice, the Landlord may pay the amount of such lien or discharge the same by deposit or by bonding proceedings, and in the event of such deposit or bonding proceedings, the Landlord may require the lienor to prosecute an appropriate action to enforce the lienor's claim. In such case, the Landlord may pay any judgment recovered on such claim. Any amount paid at any time by the Tenant or in respect to the use of water, electric current or sprinkler supervisory service, and any expense incurred or sum of money paid by the Landlord by reason of the failure of the Tenant to comply with any provision hereof, or in defending any such action, shall be deemed to be "additional rent" for the failure of the demised premises, and shall be due and payable by the Tenant to the Landlord on the first day of the next following month, or, at the option of the Landlord, on the first day of any succeeding month. The receipt by the Landlord of any installment of the regular stipulated rent hereunder or any of said "additional rent" shall not be a waiver of any other "additional rent" then due.

EIGHTH.—The failure of the Landlord to insist, in any one or more instances upon a strict performance of any of the covenants of this lease, or to exercise any option herein contained, shall not be construed as a waiver or a relinquishment for the future of such covenant or option, but the same shall continue and remain in full force and effect. The receipt by the Landlord of rent, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach and no waiver by the Landlord of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Landlord. Even though the Landlord shall consent to an assignment hereof no further assignment shall be made without express consent in writing by the Landlord.

NINTH.—If this lease be assigned, or if the demised premises or any part thereof be underlet or occupied by anybody other than the Tenant the Landlord may collect rent from the assignee, under-tenant or occupant, and apply the net amount collected to the rent herein reserved, and no such collection shall be deemed a waiver of the covenant herein against assignment and underletting, or the acceptance of the assignee, under-tenant or occupant as tenant, or a release of the Tenant from the further performance by the Tenant of the covenants herein contained on the part of the Tenant.

TENTH.—This lease shall be subject and subordinate at all times, to the lien of the mortgages now on the demised premises, and to all advances made or hereafter to be made upon the security thereof, and subject and subordinate to the lien of any mortgage or mortgages which at any time may be made to a lien upon the premises. The Tenant will execute and deliver such further instrument or instruments subordinating this lease to the lien of any such mortgage or mortgages as shall be desired by any mortgagee or proposed mortgagee. The Tenant hereby appoints the Landlord the attorney-in-fact of the Tenant, irrevocable, to execute and deliver any such instrument or instruments for the Tenant.

ELEVENTH.—All improvements made by the Tenant to or upon the demised premises, except said trade fixtures, shall when made, at once be deemed to be attached to the freehold, and become the property of the Landlord, and at the end or other expiration of the term, shall be surrendered to the Landlord in as good order and condition as they were when installed, reasonable wear and damages by the elements excepted.

TWELFTH.—Any notice or demand which under the terms of this lease or under any statute must or may be given or made by the parties hereto shall be in writing and shall be given or made by mailing the same by certified or registered mail addressed to the respective parties at the addresses set forth in this lease.

THIRTEENTH.—The Landlord shall not be liable for any failure of water supply or electrical current, sprinkler damage, or failure of sprinkler service, nor for injury or damage to person or property caused by the elements or by other tenants or persons in said building, or resulting from steam, gas, electricity, water, rain or snow, which may leak or flow from any part of said buildings, or from the pipes, appliances or running works of the same, or from the street or sub-surface, or from any other place, nor for interference with light or other incorporeal hereditaments by anybody other than the Landlord, or caused by operations by or for a governmental authority in construction of any public or quasi-public work, neither shall the Landlord be liable for any latent defect in the building.

FOURTEENTH.—No diminution or abatement of rent, or other compensation shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the building or to its appliances, nor for any space taken to comply with any law, ordinance or regulation of a governmental authority. In respect to the various "services," if any, herein expressly or impliedly agreed to be furnished by the Landlord to the Tenant, it is agreed that there shall be no diminution or abatement of the rent, or any other compensation, for interruption or curtailment of such "service" when such interruption or curtailment shall be due to accident, alteration, or repairs, or to some other cause not to be made or to inability or difficulty in securing supplies or labor for the maintenance of such "service," or to some other cause not to be made or to inability or difficulty in securing supplies or labor or curtailment of any such "service," shall be deemed a constructive eviction. The Landlord shall not be required to furnish, and the Tenant shall not be entitled to receive, any of such "services," during any period wherein the Tenant shall be in default in respect to the payment of rent. Neither shall there be any abatement or diminution of rent because of making of repairs, improvements or decorations to the demised premises after the date above fixed for the commencement of the term, it being understood that rent shall, in any event, commence to run at such date so above fixed.

FIFTEENTH.—The Landlord may prescribe and regulate the placing of safes, machinery, quantities of merchandise and other things. The Landlord may also prescribe and regulate which elevator and entrances shall be used by the Tenant's employees, and for the Tenant's shipping. The Landlord may make such other and further rules and regulations as, in the Landlord's judgment, may from time to time be needed for the safety, care or cleanliness of the building, and for the preservation of good order therein. The Tenant and the employees and agents of the Tenant will observe and conform to all such rules and regulations.

SIXTEENTH.—In the event that an excavation shall be made for building or other purposes upon land adjacent to the demised premises or shall be contemplated to be made, the Tenant shall afford to the person or persons causing or to cause such excavation, license to enter upon the demised premises for the purpose of doing such work as said person or persons shall deem to be necessary to preserve the wall or walls, structure or structures upon the demised premises from injury and to support the same by proper foundations.

SEVENTEENTH.—No vaults or space not within the property line of the building are leased hereunder. Landlord makes no representation as to the location of the property line of the building. Such vaults or space as Tenant may be permitted to use or occupy are to be used or occupied under a revocable license and if such license be revoked by the Landlord as to the use of part or all of the vaults or space Landlord shall not be subject to any liability. Tenant shall not be entitled to any compensation or re-duction in rent nor shall this be deemed constructive or actual eviction. Any tax, fee or charge of municipal or other authorities for such vaults or space shall be paid by the Tenant for the period of the Tenant's use or occupancy thereof.

EIGHTEENTH.—That during seven months prior to the expiration of the term hereby granted, applicants shall be admitted at all reasonable hours of the day to view the premises until rented; and the Landlord and the Landlord's agents shall be permitted at any time during the term to visit and examine the agents at any reasonable hour of the day, and workmen may enter at any time, when authorized by the Landlord or the Landlord's agents, to make or facilitate repairs in any part of the building; and if the said Landlord shall not be personally present to open and permit an entry into said premises, at any time, when for any reason an entry therein shall be necessary or permissible hereunder, the Landlord or the Landlord's agents may forcibly enter the same without rendering the Landlord or such agents liable to the Tenant's claim or cause of action for damages by reason thereof (if during such entry the Landlord shall accord reasonable care to the Tenant's property) and without in any manner affecting the obligations and covenants of this lease; it is, however, expressly understood that the right and authority hereby reserved, does not impose, nor does the Landlord assume, by reason thereof, any responsibility or liability whatsoever for the care or supervision of said premises, or any of the pipes, fixtures, appliances or appurtenances therein contained or therewith in any manner connected.

NINETEENTH.—The Landlord has made no representations or promises in respect to said building or to the demised premises except those contained herein and those if any contained in some written communication to the Tenant, signed by the Landlord. This instrument may not be changed, modified, discharged or terminated orally.

TWENTIETH.—If the Tenant shall at any time be in default hereunder, and if the Landlord shall institute an action or summary proceeding against the Tenant based upon such default, then the Tenant will reimburse the Landlord for the expense of attorneys' fees and disbursements thereby incurred by the Landlord, so far as the same are reasonable in amount. Also, so long as the Tenant shall be a tenant hereunder the amount of such expenses shall be deemed to be "additional rent" hereunder and shall be due from the Tenant to the Landlord on the first day of the month following the incurring of such respective expenses.

TWENTY-FIRST.—Landlord shall not be liable for failure to give possession of the premises upon commencement date by reason of the fact that premises are not ready for occupancy, or due to a prior Tenant wrongfully holding over or any other person wrongfully in possession or for any other reason: in such event the rent shall not commence until possession is given or is available, but the term herein shall not be extended.

IF A FIRST FLOOR
INCREASED FIRE INSURANCE RATE
WATER RENT
SEWER
ELECTRIC CURRENT
SPRINKLER SYSTEM
SECURITY
NUISANCE
BROKERS COMMISSIONS
WINDOW CLEANING
VALIDITY
EXECUTION & DELIVERY OF LEASE
EXTERIOR OF PREMISES
PLATE GLASS
WAR
EMERGENCY
ELEVATOR
POSSESSION
QUIET
HEAT

THE TENANT FURTHER COVENANTS:

TWENTY-SECOND.—If the demised premises or any part thereof consist of a store, or of a first floor, or of any part thereof, the Tenant will keep the sidewalk and curb in front thereof clean at all times and free from snow and ice, and will keep insured in favor of the Landlord, all plate glass therein and furnish the Landlord with policies of insurance covering the same.

TWENTY-THIRD.—If by reason of the conduct upon the demised premises of a business not herein permitted, or if by reason of the improper or careless conduct of any business upon or use of the demised premises, the fire insurance rate shall at any time be higher than it otherwise would be, then the Tenant will reimburse the Landlord, as additional hereunder, for that part of all the insurance premiums hereafter paid out by the Landlord which shall have been charged because of the conduct of such business not so permitted, or because of the improper or careless conduct of any business upon or use of the demised premises, and will make such reimbursement upon the first day of the month following such outlay by the Landlord, but this covenant shall not apply to a premium for any period beyond the expiration date of this lease, first above specified. In any action or proceeding wherein the Landlord and Tenant are parties a schedule or "make up" of rent for the building on the demised premises, purporting to have been issued by New York Fire Insurance Exchange or other body making fire insurance rates for the demised premises, shall be prima facie evidence of the facts therein stated and of the several items and charges included in the fire insurance rate then applicable to the demised premises.

TWENTY-FOURTH.—If a separate water meter be installed for the demised premises, or any part thereof, the Tenant will keep the same in repair and pay the charges made by the municipality or water supply company for its use in respect to the consumption of water, as and when bills therefor are rendered. If the demised premises, any part thereof, be supplied with water through a meter which supplies other premises the Tenant will pay to the Landlord, as and when bills are rendered therefor, the Tenant's proportionate part of all charges which the municipality or water supply company shall make for all water consumed through said meter, as indicated by said meter. Such proportionate part shall be fixed by apportioning the respective charge according to the floor area against all of the rentable floor area in the building (exclusive of the basement) which shall have been occupied during the period of the respective charges, taking into account the period that each part of such area was occupied. Tenant agrees to pay as additional rent the Tenant's proportionate part, determined as aforesaid, of the sewer rent or charge imposed or assessed upon the building of which the premises are a part.

TWENTY-FIFTH.—That the Tenant will purchase from the Landlord, if the Landlord shall so desire, all electric current that the Tenant requires at the demised premises, and will pay the Landlord for the same, as the amount of consumption shall be indicated by the meter furnished therefor. The price for said current shall be the same as that charged for consumption similar to that of the Tenant by the company supplying electricity in the same community. Payments shall be due as and when bills shall be rendered. The Tenant shall comply with the rules, regulations and contract provisions as those prescribed by said company for a consumption similar to that of the Tenant.

TWENTY-SIXTH.—If there now is or shall be installed in said building a "sprinkler system" the Tenant agrees to keep the appliances thereof in the demised premises in repair and good working condition, and if the New York Board of Fire Underwriters or the New York Fire Insurance Exchange or any bureau, department or official of the State or local government requires or recommends that any changes, modifications, alterations or additional sprinkler heads or other equipment be made or supplied by reason of the Tenant's business, or the location of partitions, trade fixtures, or other contents of the demised premises, or if such changes, modifications, alterations, additional sprinkler heads or other equipment in the demised premises are necessary to prevent the imposition of a penalty or charge against the full allowance for a sprinkler system in the fire insurance rate as fixed by said exchange, or by any fire insurance company, the Tenant will at the Tenant's own expense, promptly make and supply such changes, modifications, alterations, additional sprinkler heads or other equipment, as additional rent hereunder the Tenant will pay to the Landlord, annually in advance, throughout the term \$....., toward the contract price for sprinkler supervisory service.

TWENTY-SEVENTH.—The sum of \$..... Dollars is deposited by the Tenant herein with the Landlord herein as security for the faithful performance of all the covenants and conditions of the lease by the said Tenant. If the Tenant faithfully performs all the covenants and conditions on his part to be performed, then the sum deposited shall be returned to said Tenant.

TWENTY-EIGHTH.—This lease is granted and accepted on the especially understood and agreed condition that the Tenant will conduct his business in such a manner, both as regards noise and kindred nuisances, as will in no wise interfere with, annoy, or disturb any other tenants, in the conduct of their several businesses, or the landlord in the management of the building; under penalty of forfeiture of this lease and consequential damages.

TWENTY-NINTH.—The Landlord hereby recognizes as the broker who negotiated and consummated this lease with the Tenant herein, and agrees that if, as, and when the Tenant exercises the option, if any, contained herein to renew this lease, or fails to exercise the option, if any, contained herein to cancel this lease, the Landlord will pay to said broker a further commission in accordance with the rules and commission rates of the Real Estate Board in the community. A sale, transfer, or other disposition of the Landlord's interest in said lease shall not operate to defeat the Landlord's obligation to pay the said commission to the said broker. The Tenant herein hereby represents to the Landlord that the said broker is the sole and only broker who negotiated and consummated this lease with the Tenant.

THIRTIETH.—The Tenant agrees that it will not require, permit, suffer, nor allow the cleaning of any window, or windows, in the demised premises from the outside (within the meaning of Section 202 of the Labor Law) unless the equipment and safety devices required by law, ordinance, regulation or rule, including, without limitation, Section 202 of the New York Labor Law, are provided and used, and unless the rules or any supplemental rules of the Industrial Board of the State of New York are fully complied with; and the Tenant hereby agrees to indemnify the Landlord, Owner, Agent, Manager, and/or Superintendent, as a result of the Tenant's requiring, permitting, suffering, or allowing any window, or windows in the demised premises to be cleaned from the outside in violation of the requirements of the aforesaid laws, ordinances, regulations and/or rules.

THIRTY-FIRST.—The invalidity or unenforceability of any provision of this lease shall in no way affect the validity or enforceability of any other provision hereof.

THIRTY-SECOND.—In order to avoid delay this lease has been prepared and submitted to the Tenant for signature with the understanding that it shall not bind the Landlord unless and until it is executed and delivered by the Landlord.

THIRTY-THIRD.—The Tenant will keep clean and polished all metal, trim, marble and stonework which are a part of the exterior of the premises, using such materials and methods as the Landlord may direct, and if the Tenant shall fail to comply with the provisions of this paragraph, the Landlord may cause such work to be done at the expense of the Tenant.

THIRTY-FOURTH.—The Landlord shall replace at the expense of the Tenant any and all broken glass in the skylights, doors and walls in and about the demised premises. The Landlord may insure and keep insured all plate glass in the skylights, doors and walls in the demised premises, for and in the name of the Landlord and bills for the premiums therefor shall be rendered by the Landlord to the Tenant at such times as the Landlord may elect, and shall be due from and payable by the Tenant when rendered, and the amount thereof shall be deemed to be, and shall be paid as, additional rent.

THIRTY-FIFTH.—This lease and the obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no wise be affected, impaired or excused because Landlord is unable to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make or is delayed in making any repairs, additions, alterations or decorations or is unable to supply or is delayed in supplying any equipment or fixtures if Landlord is prevented or delayed from so doing by reason of governmental preemption in connection with a National Emergency declared by the President of the United States or in connection with any rule, order or regulation of any department or subdivision thereof of any government agency or by reason of the conditions of supply and demand which have been or are affected by war or other emergency.

THE LANDLORD COVENANTS

FIRST.—That if and so long as the Tenant pays the rent and "additional rent" reserved hereby, and performs and observes the covenants and provisions hereof, the Tenant shall quietly enjoy the demised premises, subject however, to the terms of this lease, and to the mortgages above mentioned, provided however, that this covenant shall be conditioned upon the rendering of title to the premises by Landlord.

SECOND.—Subject to the provisions of Paragraph "Fourtenth" above the Landlord will furnish the following respective services: (a) Elevator service, if the building shall contain an elevator or elevators, on all days except Sundays and holidays, from A.M. to P.M. and on Saturdays from P.M.; (b) Heat, during the same hours on the same days in the cold season in each year.

And it is mutually understood and agreed that the covenants and agreements contained in the within lease shall be binding upon the parties hereto and upon their respective successors, heirs, executors and administrators.

In Witness Whereof, the Landlord and Tenant have respectively signed and sealed these presents the day and year first above written.

IN PRESENCE OF:

Edward J. Kelly [L. S.]
Landlord
Lipid Lounge [L. S.]
Tenant

ACKNOWLEDGMENT IN NEW YORK STATE (RPL 309-a)

State of New York, County of ss.:

On before me, the undersigned,
personally appeared

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(signature and office of individual taking acknowledgment)

ACKNOWLEDGMENT OUTSIDE NEW YORK STATE (RPL 309-b)

State of County of ss.:

On before me, the undersigned,
personally appeared

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument, and that such individual made such appearance before the undersigned in

(insert city or political subdivision and state or county or other place acknowledgment taken)

(signature and office of individual taking acknowledgment)

ACKNOWLEDGMENT BY SUBSCRIBING WITNESS(ES)

State of } ss.:
County of }

On before me, the undersigned,
personally appeared

the subscribing witness(es) to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he/she/they reside(s) in (if the place of residence is in a city, include the street and street number, if any, thereof);

that he/she/they know(s)

to be the individual(s) described in and who executed the foregoing instrument; that said subscribing witness(es) was (were) present and saw said

execute the same; and that said witness(es) at the same time subscribed his/her/their name(s) as a witness(es) thereto.

(☐ if taken outside New York State insert city or political subdivision and state or county or other place acknowledgment taken And that said subscribing witness(es) made such appearance before the undersigned in

(signature and office of individual taking acknowledgment)

BUILDING 1154 E 70th Street
Premises
Commune Realty Landlord
to
Liquor Lounge Tenant

LEASE

GUARANTY

In consideration of the letting of the premises within mentioned to the Tenant within named, and of the sum of One Dollar, to the undersigned in hand paid by the Landlord within named, the undersigned hereby guarantees to the Landlord and to the heirs, successors and/or assigns of the Landlord, the payment by the Tenant of the rent, within provided for, and the performance by the Tenant of all of the provisions of the within lease. Notice of all defaults is waived, and consent is hereby given to all extensions of time that any Landlord may grant.

Dated,

State of New York, County of ss.: ACKNOWLEDGMENT RPL 309-a (Do not use outside New York State)
On before me, the undersigned, personally appeared

personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(signature and office of individual taking acknowledgment)